

AMENDED IN ASSEMBLY MARCH 6, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2100

**Introduced by Assembly Member Wolk
(Principal coauthor: Assembly Member Berg)
(Coauthor: Assembly Member Krekorian)**

February 19, 2008

An act to amend Section 15630 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2100, as amended, Wolk. Elder abuse: reporting.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. These procedures require certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse.

Under existing law, if the abuse has occurred in a long-term care facility, the mandated reporter must report the abuse to the local ombudsperson or the local law enforcement agency. Existing law provides that, except in an emergency, the local ombudsperson ~~or~~ and the local law enforcement agency ~~is~~ are required to make reports about abuse reported to them to specified entities authorized to receive that information as soon as practicable.

This bill would require the local ombudsperson ~~or~~ and the local law enforcement agency to *immediately* report ~~instances~~ *cases of alleged known* or suspected physical abuse, which includes sexual abuse, and financial abuse to the local district attorney's office in the county where the abuse occurred.

Because failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor, this bill would change the scope of an existing crime thus constituting a state-mandated local program. By increasing the duties of local district attorneys, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 15630 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 15630. (a) Any person who has assumed full or intermittent
- 4 responsibility for the care or custody of an elder or dependent
- 5 adult, whether or not he or she receives compensation, including
- 6 administrators, supervisors, and any licensed staff of a public or
- 7 private facility that provides care or services for elder or dependent
- 8 adults, or any elder or dependent adult care custodian, health
- 9 practitioner, clergy member, or employee of a county adult
- 10 protective services agency or a local law enforcement agency, is
- 11 a mandated reporter.
- 12 (b) (1) Any mandated reporter who, in his or her professional
- 13 capacity, or within the scope of his or her employment, has
- 14 observed or has knowledge of an incident that reasonably appears
- 15 to be physical abuse, as defined in Section 15610.63 of the Welfare
- 16 and Institutions Code, abandonment, abduction, isolation, financial
- 17 abuse, or neglect, or is told by an elder or dependent adult that he
- 18 or she has experienced behavior, including an act or omission,
- 19 constituting physical abuse, as defined in Section 15610.63 of the
- 20 Welfare and Institutions Code, abandonment, abduction, isolation,
- 21 financial abuse, or neglect, or reasonably suspects that abuse, shall

1 report the known or suspected instance of abuse by telephone
2 immediately or as soon as practicably possible, and by written
3 report sent within two working days, as follows:

4 (A) If the abuse has occurred in a long-term care facility, except
5 a state mental health hospital or a state developmental center, the
6 report shall be made to the local ombudsperson or the local law
7 enforcement agency.

8 ~~Except in an emergency, the~~ The local ombudsperson and the
9 local law enforcement agency shall, as soon as practicable, *except*
10 *in the case of an emergency or pursuant to a report required to*
11 *be made pursuant to clause (v), in which case these actions shall*
12 *be taken immediately*, do all of the following:

13 (i) Report to the State Department of ~~Health Services~~ *Public*
14 *Health* any case of known or suspected abuse occurring in a
15 long-term health care facility, as defined in subdivision (a) of
16 Section 1418 of the Health and Safety Code.

17 (ii) Report to the State Department of Social Services any case
18 of known or suspected abuse occurring in a residential care facility
19 for the elderly, as defined in Section 1569.2 of the Health and
20 Safety Code, or in an adult day care facility, as defined in paragraph
21 (2) of subdivision (a) of Section 1502.

22 (iii) Report to the State Department of ~~Health Services~~ *Public*
23 *Health* and the California Department of Aging any case of known
24 or suspected abuse occurring in an adult day health care center, as
25 defined in subdivision (b) of Section 1570.7 of the Health and
26 Safety Code.

27 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
28 any case of known or suspected criminal activity.

29 (v) Report all ~~instances~~ *cases* of ~~alleged~~ *known* or suspected
30 physical abuse; and financial abuse to the local district attorney's
31 office in the county where the abuse occurred.

32 (B) If the suspected or alleged abuse occurred in a state mental
33 hospital or a state developmental center, the report shall be made
34 to designated investigators of the State Department of Mental
35 Health or the State Department of Developmental Services, or to
36 the local law enforcement agency.

37 Except in an emergency, the local law enforcement agency shall,
38 as soon as practicable, report any case of known or suspected
39 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

1 (C) If the abuse has occurred any place other than one described
2 in subparagraph (A), the report shall be made to the adult protective
3 services agency or the local law enforcement agency.

4 (2) (A) A mandated reporter who is a clergy member who
5 acquires knowledge or reasonable suspicion of elder or dependent
6 adult abuse during a penitential communication is not subject to
7 paragraph (1). For purposes of this subdivision, “penitential
8 communication” means a communication that is intended to be in
9 confidence, including, but not limited to, a sacramental confession
10 made to a clergy member who, in the course of the discipline or
11 practice of his or her church, denomination, or organization is
12 authorized or accustomed to hear those communications and under
13 the discipline tenets, customs, or practices of his or her church,
14 denomination, or organization, has a duty to keep those
15 communications secret.

16 (B) Nothing in this subdivision shall be construed to modify or
17 limit a clergy member’s duty to report known or suspected elder
18 and dependent adult abuse when he or she is acting in the capacity
19 of a care custodian, health practitioner, or employee of an adult
20 protective services agency.

21 (C) Notwithstanding any other provision in this section, a clergy
22 member who is not regularly employed on either a full-time or
23 part-time basis in a long-term care facility or does not have care
24 or custody of an elder or dependent adult shall not be responsible
25 for reporting abuse or neglect that is not reasonably observable or
26 discernible to a reasonably prudent person having no specialized
27 training or experience in elder or dependent care.

28 (3) (A) A mandated reporter who is a physician and surgeon,
29 a registered nurse, or a psychotherapist, as defined in Section 1010
30 of the Evidence Code, shall not be required to report, pursuant to
31 paragraph (1), an incident where all of the following conditions
32 exist:

33 (i) The mandated reporter has been told by an elder or dependent
34 adult that he or she has experienced behavior constituting physical
35 abuse, as defined in Section 15610.63 of the Welfare and
36 Institutions Code, abandonment, abduction, isolation, financial
37 abuse, or neglect.

38 (ii) The mandated reporter is not aware of any independent
39 evidence that corroborates the statement that the abuse has
40 occurred.

1 (iii) The elder or dependent adult has been diagnosed with a
2 mental illness or dementia, or is the subject of a court-ordered
3 conservatorship because of a mental illness or dementia.

4 (iv) In the exercise of clinical judgment, the physician and
5 surgeon, the registered nurse, or the psychotherapist, as defined
6 in Section 1010 of the Evidence Code, reasonably believes that
7 the abuse did not occur.

8 (B) This paragraph shall not be construed to impose upon
9 mandated reporters a duty to investigate a known or suspected
10 incident of abuse and shall not be construed to lessen or restrict
11 any existing duty of mandated reporters.

12 (4) (A) In a long-term care facility, a mandated reporter shall
13 not be required to report as a suspected incident of abuse, as defined
14 in Section 15610.07, an incident where all of the following
15 conditions exist:

16 (i) The mandated reporter is aware that there is a proper plan
17 of care.

18 (ii) The mandated reporter is aware that the plan of care was
19 properly provided or executed.

20 (iii) A physical, mental, or medical injury occurred as a result
21 of care provided pursuant to clause (i) or (ii).

22 (iv) The mandated reporter reasonably believes that the injury
23 was not the result of abuse.

24 (B) This paragraph shall not be construed to require a mandated
25 reporter to seek, nor to preclude a mandated reporter from seeking,
26 information regarding a known or suspected incident of abuse prior
27 to reporting. This paragraph shall apply only to those categories
28 of mandated reporters that the State Department of ~~Health Services~~
29 *Public Health* determines, upon approval by the Bureau of
30 Medi-Cal Fraud and Elder Abuse and the state long-term care
31 ombudsperson, have access to plans of care and have the training
32 and experience necessary to determine whether the conditions
33 specified in this section have been met.

34 (c) (1) Any mandated reporter who has knowledge, or
35 reasonably suspects, that types of elder or dependent adult abuse
36 for which reports are not mandated have been inflicted upon an
37 elder or dependent adult, or that his or her emotional well-being
38 is endangered in any other way, may report the known or suspected
39 instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of ~~Health Services~~ *Public Health* and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including

1 information that led that person to suspect elder or dependent adult
2 abuse, as requested by the agency receiving the report.

3 (f) The reporting duties under this section are individual, and
4 no supervisor or administrator shall impede or inhibit the reporting
5 duties, and no person making the report shall be subject to any
6 sanction for making the report. However, internal procedures to
7 facilitate reporting, ensure confidentiality, and apprise supervisors
8 and administrators of reports may be established, provided they
9 are not inconsistent with this chapter.

10 (g) (1) Whenever this section requires a county adult protective
11 services agency to report to a law enforcement agency, the law
12 enforcement agency shall, immediately upon request, provide a
13 copy of its investigative report concerning the reported matter to
14 that county adult protective services agency.

15 (2) Whenever this section requires a law enforcement agency
16 to report to a county adult protective services agency, the county
17 adult protective services agency shall, immediately upon request,
18 provide to that law enforcement agency a copy of its investigative
19 report concerning the reported matter.

20 (3) The requirement to disclose investigative reports pursuant
21 to this subdivision shall not include the disclosure of social services
22 records or case files that are confidential, nor shall this subdivision
23 be construed to allow disclosure of any reports or records if the
24 disclosure would be prohibited by any other provision of state or
25 federal law.

26 (h) Failure to report, or impeding or inhibiting a report of,
27 physical abuse, as defined in Section 15610.63 of the Welfare and
28 Institutions Code, abandonment, abduction, isolation, financial
29 abuse, or neglect of an elder or dependent adult, in violation of
30 this section, is a misdemeanor, punishable by not more than six
31 months in the county jail, by a fine of not more than one thousand
32 dollars (\$1,000), or by both that fine and imprisonment. Any
33 mandated reporter who willfully fails to report, or impedes or
34 inhibits a report of, physical abuse, as defined in Section 15610.63
35 of the Welfare and Institutions Code, abandonment, abduction,
36 isolation, financial abuse, or neglect of an elder or dependent adult,
37 in violation of this section, where that abuse results in death or
38 great bodily injury, shall be punished by not more than one year
39 in a county jail, by a fine of not more than five thousand dollars
40 (\$5,000), or by both that fine and imprisonment. If a mandated

1 reporter intentionally conceals his or her failure to report an
2 incident known by the mandated reporter to be abuse or severe
3 neglect under this section, the failure to report is a continuing
4 offense until a law enforcement agency specified in paragraph (1)
5 of subdivision (b) of Section 15630 of the Welfare and Institutions
6 Code discovers the offense.

7 (i) For purposes of this section, “dependent adult” shall have
8 the same meaning as in Section 15610.23.

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution for
11 certain costs that may be incurred by a local agency or school
12 district because, in that regard, this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 However, if the Commission on State Mandates determines that
19 this act contains other costs mandated by the state, reimbursement
20 to local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.